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1941.

File No. O. Pri. Edun. Bom. 41

Legal **DEPARTMENT**

A **BRANCH**

K.S.R. 8/6.

Subject:—

Opinions under the Bombay Primary Education Act, 1923.

P 68 E

File No. O. Pri. Edun. Bom. 41

Std. Sectt. Slip 24 B a.

122-A

C O N T E N T S.

Legal Department File No1 C. Primary Education Dec./41

Sr. No.	D.O.No.	Subject	Pages
		Bombay Primary Education Rules, 1923.	
1.	221 24-1-41	Primary Education Rules - Rule 112 -. Whether the contention that while calculating the share of the non-local authority under - the fees are to be deducted from the contribution payable by the non-local authority municipality on a capitation basis is valid. Whether the two non-local authority municipalities and the notified area committee would be entitled to fees remitted from the Primary Schools in their areas against the contributions recoverable from them on a capitation basis and rule-	1-2
2.	1219 7-2-41	(i) Whether the president of a local authority can legally demand directly from the administrative officer of the school board any information in respect of the schools maintained by the local authority (ii) Whether a local authority can call for any information from the school board in connection with the appointments and transfers of primary school teachers --	3-6
3.	1231 10-2-41	Effect of G.R.S.D. No. S.72(35) dt. 27-6-1932 coupled with the proceedings held by the Surat Municipality on 11-8-32 --- Whether it would be desirable to suggest to all local authorities concerned to pass suitable resolutions confirming and adopting with retrospective effect all the relevant sanctioning orders issued by Govt. under sec.8(2)(b)	7-8
4.	1611 27-2-41	Whether owing to disagreement of chairman and vice-Chairman on for some other cause, it will by itself be a sufficient ground for holding that the school Board as a body in on that account "not competent to perform the duties imposed on it by or under the Act"within the meaning of Sec.26-a-	9-10
5.	2418 25-3-41	Discharge of Mr. C.N. Kania, clerk employed by the Nadiad Municipality due to the fact that the Municipality ceased to be a local authority -- Whether a claim is legally maintainable against the employer in respect of this discharge. --	11-12
6.	3037 [illegible]-4-41 [illegible]	(i) Whether a local authority is competent to withdraw the personal pay at its pleasure a whether the approval of Govt. is necessary for such a step. (ii) Whether a local authority can abolish permanently the personal pay when it has once agreed to make the payment and whether this can be done without the previous approval of Govt.	13-
7.	3561 25-4-41		

Sr. No.	R.I./ G.No.	Subject	pages
7.	3655 / 25-4-41	Sec. 8(2)(6).- Whether the alterations in the scales of pay are merely to be approved by the local authority or to be effected by the local authority subject to the requisite sanction of the provl.Govt. —	19-20
8.	3858 / 30-4-41	Whether under rule 20(2)(i) of the Sch.M, a school Board is competent to reinstate a teacher who has been dismissed from by service by the Administrative Officer under rule 41(6) (iii) ——	21-24
9.	3862 / 30-4-41	Whether the Godhra Municipality can be compelled to pay up the arrears and if so in what manner.	25-30
10	4549 / 19-5-41	Whether G.M.E.D. No.P.-167 /11041-F dt. 25-11-38 which fixed one-half as the proportion of the expenditure on Primary education can be regarded as having been issued after the said rule was amended and hence valid ——	31-
11.	2030 / 7-3-41	School committees in in villages where village panchayats have been constituted and in respect of which the district local Boards concerned have not made regulations under cl.(d) of sub.sec.(3) of sec.27 — whether Govt. can make any statutory rules as regards schools committees in villages which have no village panchayats ——	33-34
12.	- 5055 / 2-6-41	Sec. 27 (3)(d). - Rule 95 - As no regulations have been framed by the D.L.B. Broach whether the school committees appointed by it in villages in which there was no pancyayat at the time can be deemed to be statutory committees. —	35-36
13.	5078 / 3-6-41	Rule 92 - Deductions from the normal grant - Whether it would be possible to give effect to the proposal that such deductions should be on a uniform scale and that they should be dependent upon the reports of inspecting offiicers of Govt. Whether it is necessary to amend rule 91 -	37-38
14.	5393 / 17-6-41	Whether Govt. can frame a Rule under the Act to the effect that every local authority which has introduced compulsory education on a fairly large scale should have at least one attendance officer, etc. ——	39-40
15.	5407 / 17-6-41	Sec. 26A and Rule 6 - Whether action can be be taken under Sec. 26A, if the local authority commits default in the discharge of the statutory obligation to make adequate arrangement for the supply of a sufficient number of trained teachers —	41-42
16	93-P / 5-7-41	Sec. 3(6) - Appointment of members of the members of the new school Board during the period of supersession of a local authority by the provl.Govt..	43-44
17	5964 / 10-7-41		

No.	L.I. /Or. No.	Subject	page
17	[illegible]	Sec. 127(2) of the Pub.Local Board Act, Rule 47(3) — Whether the inferior servants, the policeman and the Talibs paid who retired from service of the local authority will be entitled to any pension from the Primary Education Fund. Whether regulations framed by the local board under sec. — will be applicable to them. —	45
18	[illegible]	Sec. 6 (1) - Whether the buildings transferred by the Municipality to be a D.L.B. under - would vest in the Govt.	4
19.	[illegible]	Sec. 27(1) - Whether Govt. has power to make a rule under - for regulating the inflation of corporal punishment in primary schools.	49
20.	[illegible]	Whether the proposed rule 3 of the Model para. Fund Rules for school Boards is in order , —	5
21.	[illegible]	(i) Whether Govt's liability to pay the Ouse Municipality half the expenditure on compulsory education under rule 6 is avoided by virtue of Sec. 13(2), or whether Govt's liability is limited by virtue of sec.13(1) (ii) whether Govt. can legally reduce the grant in respect of voluntary primary education —	59
22.	[illegible]	Whether the Municipal Municipality is legally bound to pay the D.L.B. Ahmedabad all the reasonable expenses incurred by the latter in running the primary schools from 1-8-37 to 12-6-39.	9
23	[illegible]	Whether it is competent for the South Local authority Municipality to meet the expenditure on religious instruction in the primary schools from the primary education fund.	
24.	[illegible]	Whether the sale of the land by the former Municipality in 1938 which had vested in the the D.L.B. in 1934 is void -ab- ab initio.	6
25	[illegible]	whether the grant of "personal pay" by the Dhulia Local authority to teachers not covered by D.P.E.D. Rule 72 at [illegible] is legal. —	6
26.	[illegible]	Whether the Vice Chairman of a school Board when performing the duties of the during the latter's absence on leave Chairman Chairman during the latters absence on leave should be considered as officiating chairman and be given travelling allowance and allowed to sign cheques and other official papers.	6
27.	[illegible]	period spent under training by primary school teachers whom [illegible] was directed to be treated as on leave without pay, not counting for increments or leave or pension - whether "duty pay" to these teachers would be a payment by Govt. and not a payment on behalf of the local	

No.	D.L./ D.H.	Subject	page
		On behalf of the local authorities - whether rules of the Model F.P. Rules applies and the Local authorities cannot be compelled to accept the contribution from the "duty pay"/-	73-76
28.	[illegible]	Whether mere attendance at a meeting amounts to taking part in or assisting in any way the settlement in furtherance whose of a particulars public meeting may have been organised by the convenor of that meeting. -	75-76
29.	[illegible]	Whether Govt. can compel the local authorities under the Act and the rules thereunder to pay interest on the Prov. Fund balances of their old employees.	79-80
30.	[illegible]	Notice of suit given to Govt. by B.E. Khote, Fund Member - contending that (i) G.R.E.D. No. P. 97/[illegible]2733 is illegal(ii) the resolution of the Local authority dt. 16-12-38 discontinuing the allowance from 1-4-39 was illegal(iii) the Local authority is bound to pay either the allowance or the personal pay. Whether the suit would be defensible -	83-86
31.	[illegible]	Whether Govt. can withhold grants admissible to the Surat Municipality for primary education of children who are only within the age limits for compulsory education	87-94
32.	[illegible]	Whether the grant of personal pay sanctioned by Govt. to teacher would be proper. Whether the payment will have to be validated by the Local Authorities framing a regulation in that behalf with the sanction of Govt.	95-98
33.	[illegible]	Whether the step-child of a widow who is a subscriber to the prov.Fund can be considered to be a child within the meaning of Rule 16 of the Bom.Prov.Fund Rules.-	[illegible]
34.	[illegible]	Whether Govt. has any power to confirm the proceedings of a school board meeting.-	101-104
35.	[illegible]	Sec. 38 - Bomb School Board : Whether the Educ. Member should be disqualified a given question under Explanation(a) to - to have an interest in the leave during his period of office -	105-[illegible]
36.	[illegible]	Whether the system followed by the Ahmedabad Municipality of maintaining a staff common both to the Municipality and the school Board is in clear breach of the statutory provisions contained in the Act. -	107-110
37.	[illegible]	Whether repeated failure on the part of the Dohad and Nasik Municipalities to submit pendication papers would amount to a persistent default and would enable Govt. to take action under Sec. 17(1) of the Pri.Edu.Act,1923. Whether action can be taken under Sec. Sec.17(1) and (2) of the Pri.Edu.Act,1923.-	111-[illegible]
38.	[illegible]	Whether there is any legal objection to permitting the women subscribers to nominate outside the family when they live separate	12[illegible]
39.	[illegible]		

Sr. No.	R.I./ O.No.	Subject	Page
39	[illegible]	Secs. 42(3) and (4) — leave granted to Mr. Bhaskar without prevision previous penalties under sec. 30(1) —	120-128
40.	[illegible]	Whether Mr. Bhaskar, chairman of the School Board, Kolaba has incurred any disqualification under 30(2) since his election —	129-130
41.	[illegible]	Whether it is open to Govt. not to pay any discretionary grant in respect of the education of pupils who are outside the age limits. —	131-132
42.	[illegible]	Whether a qualified but untrained teacher who rendered an exotic teacher after serving for some time as Head Master can retain after the revision of pay in 1924 the consolidated Head Master's pay of Rs. 30 . Whether the view taken by the D.P.I. that Belgaum decision should have been appealed against by the D.L.B. is correct. (against).	133-136

N.R.D.
30-5-46
C.S.

ER
2/6

K.S.R.
2/6.

Opinion of the R.I.A.

Section 8A(2) of the Bombay Primary Education Act, 1923 provides that fees and fines received from primary Schools form part of the primary education fund of the school board. Rule 122 of the Primary Education Rules, 1924 provides that fees received from pupils of primary schools of a municipality shall be credited to the local authority. It is therefore clear from these provisions that all the fees received from primary schools in the non-local authority municipal areas in the Ratnagiri district have to be credited to the primary education fund of the local authority, District Local Board, Ratnagiri; and that the local authority has got power to increase such fees. It appears from the letter of the Director of Public Instruction at P. 91 of the E.D. File No.S-86 of 1938 as also from C.D. note at PP.25-27 ante, that while calculating the share of the non-local authority under rule 119 of the Primary Education Rules the fees are to be deducted from the contribution payable by the non-local authority municipality on a capitation basis. Although rule 119 does not specifically provide for such deduction, the intention to allow such deduction appears to be clear from rul 77 which gives power to a non-local authority municipality to abolish fees in such primary schools within the municipal area as are managed by the district local board. It follows therefore that although the fees received from primary schools in the non-local authority municipal area from part of the primary edvcation fund of the local authority, still the benefit of such fees goes to the non-local authority municipality by permitting deduction thereof in the contribution from- recoverable from such non-local authority municipality, such contribution being determined on a capitation basis under rule 119. There is no legal authority for making any distinction between what may be described as the ordinary fees and what may be called 'other' fees e.g. those " levied as a measure of retrenchment" as in the present case, since they both are for the purposes of the Primary Education Rules equally described-as "fees". Consequently the contention of the two non-local authority municipalities and the areas committee in the Ratnagiri district in the present notified case is valid and these bodies would be entitled to a set off of the whole amount of fees received from the primary schools in their

P.T.O.

schools in their areas against the contributions recoverable from them on a capitation basis under rule 119. The view taken at 'A' on P.27 ante is correct.

Sd/-P.N.M.

Remembrancer of Legal Affairs.

U.R. to the E.D., No. 701 dated the 24th January 1941.

M.R.D.
29-5-56
C.4

Office of the R.L.A.

The questions raised for consideration of the R.L.A. are:-

(1) Whether the president of a local authority can legally demand directly from the administrative officer of the school board any information in respect of the schools maintained by the Local authority and

(2) Whether a local authority can call for any information from the school board i.e. information in connection with the appointments and transfers of primary school teachers.

2. Question No.(1):- A local board or a municipalityexercising the powers and performing its duties under the Bombay Primary Education Act,1923, functions not as a local board or a municipality, as the case may be,but as a local authority for purposes of the Bombay Primary Education Act. The Bombay Primary Education Act is an enactment sui generis in character and the powers exercised and duties performed by a local board or a municipality qua a local authority under that Act are exercised and performed under that Act and not under the Bombay Local Boards Act or the Municipal Act(vide R.L.A.'s opinions Nos. 4410, dated the 9th August 1934; 135-Confl. dated 2-7-37 and 295-Confl. dated 27-11-40). Neither the Bombay Primary Education Act nor the rules made thereunder refer to any "President" of the local authority nor do they provide for any power of the president as such of a local authority (see also Primary Education Rule 12). Consequently the president of a local authority as such president cannot have any power to demand any information from the administrative officer of the school board in respect of the schools maintained by the local authority. The opinion expressed in paragraph 3 of the R.L.A.'s opinion No.48-Confl., dated 23-2-1926 that the president of a municipality can call for such information from the school board as would relate to any of his functions referred to in section 24 of the Bombay District Municipal Act, 1901, or in accordance with any rules made in that behalf under section 27 of the Bombay Primary Education Act must be held to have been modified by the later opinions(quoted above) the necessary corollary of which would be that the president of a local authority or a municipality would not be entitled to use the powers vested in him under the Bombay District Local Boards Act or the relevant Municipal Act when the local authority exercises its statutory powers under the Bombay Primary Education Act. No rules also

No rules also can be framed under section 27 of the Bombay Primary Education Act giving powers to the president of the local authority since the Act itself does not make any provision in this behalf.

3. Question No.(2) .- It is no doubt true that the powers of appointment and transfer vest in the administrative officer(see rule 41(b)(1)(ii) of the Primary Education Rules) who is the chief executive officer of the school board(see section 9(1) of the Act) and is responsible for the general administration of all primary schools managed by the local authority (see rule 42(1) of the Bombay Primary Education Rules). Under section 16(2) of the Bombay Primary Education Act a school board is bound to supply all information that is required by a local authority in respect of schools managed by it(see para. 2 of R.L.A.'s opinion No.48-Confl.dated 23-2-26). The appointments and transfers made by an administrative officer being in respect of schools maintained by a local authority, a school board would be bound under section 16(2) to supply all reasonable information relating thereto the local authority concerned if so required by it

Sd/- P.H.M.

Remembrancer of Legal Affairs.

U.R. to E.D., No. 1213 ,dated the 7th February 1941.

M.R.D.-
28-5-36
C.4

R.L.A.'s Office

Para 2, at PP. 395-396.- The question as to the effect of G.R., E.D., No.S.72(95), dated the 27th June 1932, coupled with the proceedings held by the Surat Municipality on 11th August 1932(extract at P.293ante) is presumably sub-judice in view of the proceedings pending in the High Court subsequent to the interlocutory judgement at PP.11-19 ante (see P.31 ante). Hence it would not be proper for the Remembrancer of Legal Affairs to express any opinion, particularly without a copy of the application for review said to have been filed by the Surat Municipality, on the question raised in para. 2 at PP.395-396ante. It is desirable to await the final decision of the second appeal pending in the High Court.

2. Para. 3 at PP. 394-395.- This Department had not issued any instructions to the District Government Pleader, Surat, in the matter but it appears that mere adoption of the statement filed by defendant No 2 viz. the Surat Municipality, as alleged at P.31 ante, would not amount to any admission of any liability on the part of Government. If E.D. so desires the matter will be referred to the District Government Pleader for ascertaining what exactly is the true position.

3. Para. 3 at P.396 read with para. 4 of the D.P.I's letter at P29 ante.- It would be better to await the final decision of the High Court. It may, however, be pointed out that the suit claim related to orders passed before section 8(2) (b) of the Primary Education Act was amended by Bom.XV of 1935 before which it was necessary to obtain the previous sanction of the Government. The language of section 8(2)(b) is now different and before deciding upon any general course of action, E.D. should examine in consultation with the Director of Public Instruction whether any action at all is called for in each individual case. In any event the decision will be applicable only to similar cases in which only the requisite previous sanctions has been accorded, without any further action by the local authority concerned, at a date prior to the enactment of Bom.XV of 1935. However, however, with a view to err on the safe side, as suggested by E.D. in para. 3 at P. 396 ante, it would be desirable to suggest to all the local authorities concerned to pass, if deemed fit, suitable resolutions confirming and adopting with-orders issued by

with retrospective effect all the relevant sanctioning orders issued by Government under section 8(2)(b) in view of the interlocutory judgment which may be brought to their notice for infromation and necessary action. Whether any such resolutions will achieve the object in view especially in the case of vested rights likely to be prejudicially affected by them is a question not at all free from doubt and will have to be left for decision on the merits of each and every case. Attention is however, invited to Remembrancer of Legal Affairs' U.R. to E.D., No.6729, dated the 25th July 1940, ~~dated~~ read with No. 9430, dated the 24th October 1940.

Sd/-P.N.M.

Remembrancer of Legal Affairs.

U.R. to E.D., No. 1232 dated 10th February 1941.

M.R.D.-
28-5-56
C.4

In the present case the Chairman and the Vice-Chairman have neither been disqualified nor have they resigned their offices. It cannot therefore be said that the School Board, Kolaba, is without a Chairman or a Vice-Chairman for both these officers still hold their respective offices. Even though owing to their imprisonment or for some other cause the Chairman and the Vice-Chairman may be temporarily unable to perform or may in fact not perform their respective respective duties, this will not, by itself, be a sufficient ground for holding that the School Board as a body is on that account "not competent to perform the duties imposed on it by or under the Act" within the meaning of section 26-C of the Bombay Primary Education Act, 1923. Where all the members resign or the number of members left in office is below that required to form a quorum with the result that it is impossible for the Board to function the position may be different and may, if the resulting vacancies cannot be duly filled up attract the operation of section 26-C(cf. R.L.A.'s U.O. to E.D. No. 27/-conf1. dated 8-11-1940). I do not think that cases of the type now under consideration in fact fall(nor do they appear to have been ever intended to fall) within the purview of section 26-C so as to legally justify the dissolution or supersession of the whole School Board thereunder for certain personal acts or defaults of only the Chairman and the Vice-Chairman particularly when these acts or defaults are entirely unconnected with their offices in the School Board which as such is in no way responsible for their relevant acts or for their detention in jail. If desired it would be better to take the requisite powers specifically by suitable ad hoc legislation as appears the question would be a general one.

Sd/-P.H.K.

Remembrancer of Legal Affairs.

U.O. to the E.D., No. 1833 dated the 27th February 1941.

H.R.D.
28-2-41
C.A

Office of the R.L.A.

Mr. C.N.Kania was a clerk employed by the Sandor Municipality in its capacity of a local authority under the Bombay Primary Education Act, 1923 and the terms of his employment prior to 1st July 1938 must have been determined in pursuance of rule 53 of the Bombay Primary Education Rules. His discharge on 30th June 1938 was due to the fact that the Municipality ceased to be a local authority under the Bombay Primary Education Act as amended in 1938. It is not clear whether under the relevant terms of his employment Mr.C.N.Kania was in respect of his discharge entitled to any notice or compensation. Assuming, however, that in respect of this discharge a claim is legally maintainable against the employer, this liability would devolve upon the extinct local authority or upon its successor and not upon the Municipality as such. Since the Municipality has already transferred all the Primary schools etc. including all money received by it for purposes of Primary education, as required by section 6 of the Bombay Primary Education Act, and the Municipality has already ceased to be a local authority, it is not known under what provision of law it can now be compelled to pay any amount to Mr.C.N.Kania in respect of his discharge. There is no specific provision in section 6 of the Bombay Primary Education Act requiring or authorising the Municipality to make any such payment as is now contemplated; nor is the clerical staff covered by the transitory provision relating to Administrative Officers and Supervisors in section 25 of the Bombay Primary Education (Amendment) Act, 1938.

Sd/-P.N.M. 24/3

Remembrancer of Legal Affairs.

U.O. to the R.D., No., 2690 dated the 25th March 1941.

R.R.D.-
28-3-96
C.4

Office of the B.L.A.

The committee appointed by Government to enquire into anomalies in the pay and allowances of primary school teachers recommended that in the case of teachers actually in receipt of allowances or in whose case the allowances were temporarily retrenched the allowance amount should be drawn from 1st April 1939 as personal pay to be earned in further increments if any and the amount should be treated as personal pay only if the teacher drew it, or was entitled to it for a full year prior to 1st April 1939, or prior to the discontinuance of the allowance in 1938. By Government Resolution(Edcl.Department) No.3-72,dated 18th October 1939 Government accepted the recommendation of the Committee and directed the Director of Public Instruction to advise all the local authorities which discontinued the allowances to give effect to this measure immediately. The D.P.I. advised accordingly allthe local authorities and the Shopapur school board resolved to pay the personal pay to the teachers concerned and paid it for one year,but later on discontinued it without the previous sanction of Government. The questions raised for consideration of the B.L.A. are:-

(1) Whether a local authority is competent to retrench the personal pay at its pleasure or whether the approval of Government is necessary for such a step.

(2) Whether a local authority can abolish permanently the personal pay when it has once agreed to make the payment and whether this can be done without the previous approval of Government.

The answers to both the questions appear to be in the affirmative.

The proviso(b) to section 8(2) of the Bombay Primary Education Act, 1923 states that the scales of pay and allowances applicable to the guaranteed teachers at the time at which they are taken over and employed by the local authority shall not be altered without the sanction of Government. Rule 59(1) of the Primary Education Rules, 1924 provides that the primary teachers taken over and employed by a local authority under section 8(1) of the Act shall be paid at rates in force for Government service at the time of their being so taken over and employed. Sub-rule(2) inter alia provides that a headmaster and a first assistant shall get such allowances as were in force on the date of the Act coming into operation, or as may be fixed by the local authority with the previous sanction of Government

The proviso to sub-rule(2) lays down that a local authority may,with the previous sanction of Government, discontinue any such allowance. In the year 1930 Government allowed the local authorities the option to abolish the headmaster's and first assistant' allowances as a permanent measure with the previous approval of Government. (Vide G.R. E.D. No. S/72 of 12th November 1930). Accordingly the Sholapur local authority discontinued the headmaster' and first assistants' allowances permanently with the previous sanction of Government under the proviso to rule 59(2) read with the proviso(b) to section 8(2). What the D.P.I. advised the local authorities to do as directed by G.R. (E.D.) No.S-72,dated 18-10-1939 and what theSholapur local authority did in pursuance thereof was to allowthese headmasters and first assistants to draw as "personal pay" an amount equal to the allowances which they used to get before they were abolished in 1930. "Personal pay" has not been defined either in the Primary Education Act, 1923 or in the rules made thereunder. It means additional pay granted on personal considerations and its grant will ordinarily be purely discretionary.(see D.C.S.R. 9(44)). The "Personal pay" granted by the Sholapur local authority in 1939-40 is therefore neither an allowance in force on the date of the Act coming into operation nor one fixed by the local authority with the previous sonction of Government under rule 59(2). Nor is it part of the scale pay and consequently it will not attract the privisons of proviso(b) to section 8(2) of the Primary Education Act or of rule 59 of the Primary Education Rules in regulating the grant,continuance or withdrawal of any personal pay as such by the local authority. The orders in G.R. E.D. No.S. 72, dated 18-10-39 clearly show that what was to be done thereunder in conformity with recommendation No. 1 of the committee therein set out, was not the restoration of the headmasters' and first assistants' allowances but that certain teachers who had been adversely affected by the discontinuance of these allowances were to be allowed as a special case to draw the allowance amount as personal pay to be so merged in future increments, if any. There is no statutory provision protecting such personal pay either under the Primary Education Act or under the primary Education Rules. Nor is there any provision requiring a local authority to obtain the sanction of the Provincial

P.T.O.

Bombay Provincial Government for discontinuing either temporarily or permanently these discretionary additions to the lawful amounts payable under the ordinary scales or rates of pay applicable. It does not appear that G.R. E.D. No.3-72, dated the 18-10-39 actually revised the discontinued allowances. That G.R. did not impose any obligation upon the local authorities to grant personal pay. The object seems to have been to express Government's approval to the grant of personal pay if the local authority so decides and to the proportionate increase inthe grant-in-aid for covering the extra cost which the local authority would have to meet in that connection.. Consequently neither the retrenchment nor the discontinuance of "personal pay" by the Sholapur local authority would require the previous sanction of Government. The view taken by the Educational Department in its office note at paras ante is not correct.

Sd/-P.H.H.

Remembrancer of Legal Affairs.

M.R.D.-
28-3-36
C.4

U.R. to E.D. No. 3417, dated the 17th April 1941.

Office of the R.L.A.

The views expressed by Deputy Secretary, General Department in paragraphs 2 to 4 at p. 5 ante, are legally correct. It may, however, be pointed out that under section 8(2) (b) of the Bombay Primary Education Act, 1923, the alterations in the scales of pay are not made merely to be approved by the local authority but are to be effect (i.e.both initiated or proposed as well as ultimately brought into force) by the local authority subject of course to the requisite sanction of the Provincial Government. The view taken by Deputy Secretary, G.D. in paragraph 4 at p.5 ante is in consonance with the Remembrancer of Legal Affairs' No. 28(conf1), dated the 11th February 1938 followed in R.L.A.'s No. 8853, dated the 8th September 1939 and 3747, dated the 17th April 1949.

Sd/-P.N.M.
24-4

Remembrancer of of Legal Affairs.

M.R.D.-
28-5-56
C.4

U.R. to the E.D. No. 3655 dated the 25th April 1941.

Office of the R.L.A.

The question for the R.L.A.'s consideration is whether under rule 20(2)(i) of the Schedule H, a School Board is competent to reinstate a teacher who has been dismissed from service by the Administrative Officer under rule 41(b) (iii) of the Bombay Primary Education Rules,1924.

Section 4(2) of the Bombay Primary Education Act, 1923, provides that the school Board shall exercise the powers and perform the duties of the local authority in respect of primary education as may be prescribed. The word "prescribed" as defined in section 2(11) of the Act means prescribed by rules made by the provincial Government for the purposes of the Act. Rule 4(2) of the Bombay Primary Education Rules, 1924, provides that all officers, teachers, clerks and menials so employed shall be appointed by the School Board, and shall be under the control of, and subject to the orders of, the school Board, except in so far as the powers of the school Board have been limited by the Act or by rules framed under the Act. Under rule 34(a) and (c) the power to appoint and remove or dismiss attendance officers, supervisors and clerks is vested in the School Board, while under rule 41(b) the power to appoint and to remove or dismiss any teacher or inferior servant is specifically conferred upon the Administrative officer. To this extent the power of the School Board under rule 4(2) is limited. It is no doubt true that rule 20(2) of schedule H, provides that the school Board shall not -

(i) Reinstate such officer or servant(convicted and sentenced by a criminal court to imprisonment) on the expiry of his sentence, or

(ii) employ person who has been convicted and sentenced to imprisonment for an offence by a criminal court , unless the school Board decides by a majority of two-third of the whole number of members that there are extenuating circumstances justifying such action. The power to appoint includes power to dismiss as well as the power to reappoint or to reinstate. Consequently there seems to be some apparent inconsistency inconsistency between rules 41(b) and rule 20(2) of rules in schedule H . However, these rules have to be read together and construed so as to produce the greatest harmony and the least inconsistency (Attorney General V. Sillem, 1863, 2 H & C. 431,515; Cries, Statute Law,

Law,4th Edn. 1936 page 90). On doing so, it will be found that the words "officer or sergeant" in clause (i) and the words "any person" in clause(ii) of sub-rule(2) of rule 20 in schedule H,respectively mean "officer or servant" and "any person",other than a teacher or inferior servant falling under rule 41(b) of the Primary Education Rules and the fact that the Schedule H was inserted subsequent to the amendment of rule 41 would not make any difference since both of them form part of the Primary Education Rules. Consequently the school Board can have no power either to reinstate or employ any person as a teacher or as an inferior servant under rule 20(2) in Schedule H. The resolution passed by the school Board, Kolaba in the present case reinstating the teacher who had been dismissed by the Administrative Officer on account of his conviction for an offence under section 323, Indian Penal Code would appear to be illegal and ultra vires. It would therefore be competent for the Director of Public Instruction to suspend the resolution of the School Board under section 160 of the Bombay Primary Education Act, 1923.

Sd/- P.N.M.
29-4

Remembrancer of Legal Affairs.

M.R.D.
28-5-56
C.A

U.R. to E.D. ,No. 3093,dated the 30th April 1941.

Office of the B.L.A.

The Godhra Municipality(along with 16 other Municipalities) ceased to be a Local Authority on 1st July 1933 and its schools were transferred to the District Local Board, Panch Mahals with effect from that date. By Educational Department Memorandum No.P.-167/ 11041-F, dated 29th November 1933 Government informed the Director of Public Instruction that the 17 Municipalities (including the Godhra Municipality(, which ceased to be Local Authorities on 1st July 1933, should continue to bear one-half of the the expenditure on primary education within their respective areas, as hitherto, and should accordingly pay their contribution to the Local Authority concerned at the rate of one-half of the expenditure on primary education calculated under rule 119 of the Primary Education Rules, 1924 and that the remaining 92 Municipalites, which were Non-Local Authorities prior to 1st July 1933, should continue to pay their contribution as hitherto at the rate of one-third of the expenditure calculated under rule 119. In the case of the Non-Local Municipalites Government reserved its right to revise the rate of contribution from one-third to one-half if it was found found that an increase was justifiable. This order of Government was communicated by the Director of Public Instruction to the Municipalities concerned. The Godhra Municipality however paid the contribution to the District Local Board Panch Mahals, at the rate of one-third and declined to pay at the rate of one-half of the expenditure on primary education calculated under rule 119 of the primary Education Rules. The Director of Public Instruction thereupon warned th Godhra Municipality to pay up the the arrears of contribution (Rs.98 7913) to the District Local Board within two months from the date of warning. This warning has, however however, been ignored and the arrears still remain unpaid.

2. The question for the B.L.A.'s consideration is whether the Godhra Municipality can be compelled to pay up the arrears and if so in what manner.

3. Section 6(1) of the Bombay Primary Education Act, 1923, inter alia provides that every Municipality which is not a Local Authority shall pay over annually to the Local Authority for educational purposes such amount as may from time to time be fixed by the Provincial Government on the basis of the average number of pubil pupils on the rolls of the schools in the Municipal limits receiving primary education.

27-29

Rule 118 of the Primary Education Rules, as it stood before the recent amendment effected by Educational Department Notification No.S.96 dated 26th March 1941, prescribed that the recurring cost of primary education in any year in Municipality which is not a Local Authority shall be met to the extent of one-third by the Municipality, the amount to be contributed by the Municipality being calculated as laid down in rule 119. Since the present case relates to a date prior to the amendment, rule 118as it stood before the amendment must apply. It is therefore clear from these provisions that a Municipality which is not a Local Authority could not, under the law as it stood previous to the amendment, be legally compelled to bear more than one-third of the recurring expenditure. The fact that the Godhara and some other Municipalities used to bear recurring expenditure on primary education to the extent of one-half when they were Local Authorities would furnish no legal justification for requiring them to bear the same proportion of expenditure after they ceased to be Local Authorities. These Municipalites on ceasing to be Local Authorities would be subject to the same rights and liabilites as the other municipalities which were not Local Authorities and no discrimination could legally be made between them. To be legally binding and enforceable Government Memorandum, Educational Department No. 4782-ss-F of 21st April 1938 requiring the Godhra and other Municipalites to share the expenditure to the extent of one-half should have been preceded or supplemented by a suitable amendment of rules 118 and 119 of the primary Education Rules as has since been done. The Godhra Municipality has already paid its share of expenditure to the extent of one-third as prescribed by the old rule 118 and consequently, it will not be legally feasible to call upon the Municipality to pay any more.

Sd/- P.M.M.
29-4

Remembrancer of Legal Affairs.

U.R. to E.D. No. 3862, dated the 30th April 1941.

H.R.D.
22-5-56
C.4m

Office of the R.L.A.

The point referred to the Remembrancer of Legal Affairs for opinion in the letter G.M., E.D. No.P-167/11041-F, dated the 25th November 1938, which fixed one-half as the proportion of the expenditure on primary education within their areas to be paid by non-local authority municipalities to the local authority, and which was issued before Rule 118 of the Bombay Primary Education Rules, 1924, was amended, can be regarded as having been issued after the said rule was amended and hence valid. (R.L.A. in his opinion No. 3962, dated 30th April 1941 has already advised that the old rules 118-119 would not warrant the said G.M.). The amended rule 118 provides that the amount payable by a non-local authority municipality to the local authority in this regard" shall be such proportion not less than one-third, of the actual recurring cost of primary education within the municipal limits, as the Provincial Government may from time to time fix etc." This amendment in the rule has no retrospective effect. Government must therefore fix the proportion under the amended rule after the date of the amendment, by issuing a fresh G.M. in place of the aforesaid G.M. of 1938.

Sd/-P.M.M.
17-5

Remembrancer of Legal Affairs.

U.R. to the S.D., No. 4549 dated the 19th May 1941.

H.R.D.
28-5-36
C.A

R.L.A.'S OPINION.

The attention of E.D. is invited to R.L.A.'s opinions No. 2123, dated the 8th April 1936, para. 3 of R.L.A.'s No. 6573, dated the 30th November 1936, and para. 3 of R.L.A.'s No. 3277, dated the 26th June 1937. As pointed out in those opinions and as stated in the note printed above rule 94 in Chapter VII of the Bombay Primary Education Rules, rules 94 and 95A to 108 apply to the school committees in villages where village panchayats have been constituted and in respect of which the district local boards concerned have not made regulations under clause(d) of sub-section(3) of section 27 of the Bombay Primary Education Act read with sub-section(1) of section 28 of the Bombay Village Panchayat Act, within the time specified in sub-section (2) of the said section 28. As regards schools committees in villages which have no village panchayats, Government cannot make any statutory rules but the local authority can make regulations in that behalf under section 27(3)(d) of the Primary Education Act. Before any definite opinion can be given in this case, it would therefore be necessary to ascertain whether the District Local Board, Dhanbad, has made any regulations under sub-section(3) of section 27 of the Bombay Primary Education Act and if so the date on which such regulations were made. E.D. is therefore requested to obtain this information and also a copy of the regulations, if such regulations have been made by the Dhanbad District Local Board.

Sd/-P.N.M.
6-3

Remembrancer of Legal Affairs.

M.R.D.-
28-5-38
C.4

U.R. to E.D. No. 2030, dated 7th March 1938.

R.L.A.'S Office.

Under section 27 (3)(d) of the Primary Education Act, 1923, it is for the local authority to frame regulations regulating the administration and management of primary schools. Rule 95 of the Primary Educatin Rules, 1934, provides that in villages which have a Local Board School, but in which no Panchyats have been constituted, the constitution, duties and other matters relating to School Committees shall be in accordance with the regulations made by the local authority with the sanction of Government. The District Local Board, Dumach, has framed no such regulations. Consequently, the School Committees appointed by it in villages in which there was no panchayat at the time cannot be deemed to be Statutory Committees. There can be no question of such informal Committees having a term of office fixed by law; they are displaced as soon as a Committee is validly appointed by a village Panchayat under rule 94 of the Primary Education Rules.

Sd/-P.N.M.
30-5

Remembrancer of Legal Affairs.

U.O. to E.D. No. 5055, dated 2-6-1941

H.R.D.
28-5-36
C.4

Office of the R.L.A.

Section 27(1) of the Primary Education Act, 1923, empowers Government to frame rules regulating the constitution of school Boards, and the exercise and performance of the powers and duties of local authorities. Under Rule 83 of the Primary Education Rules, 1924, no school shall be approved by a school Board as a B Class school unless, inter alias, it agrees to inspection by Government and by local Authority, and under Rule 85 approval of such a school is liable to withdrawal by the local authority subject to an appeal to Government. Rule 86 provides that an approved school which applies for a grant-in-aid shall be aided by a local authority so far as the funds at the disposal of that authority allow. Rule 91 fixes the maximum amount of such grants; and also provides that deductions should be made from the normal grant, inter alia, if the management of the school is not satisfactory. The Director's present proposal is that such deductions should be on a uniform scale, and that they should be dependent upon the reports of inspecting officers of Government. As the schools in question are subject to inspection by Government, and as Government has power under section 27(1) of the Act to prescribe rules to regulate the exercise of powers and duties of the school Board, it would be possible to give effect to the proposal by suitable amendment of Rule 91 of the Primary Education Rules. The view taken in the General Department note dated the 30th April 1941 is correct.

Sd/-P.N.M.

Remembrancer of Legal Affairs.

U.R.to R.D. No. 3073 dated the 3-6-1941.

H.R.D.-
28-5-56
C.4

Office of the R.L.A.

The Director of Public Instruction proposes that every local authority which has introduced compulsory education on a fairly large scale should have at least one attendance officer, and that that minimum number of such officers to be employed, varying with the number of students, should be prescribed. The question for consideration is whether Government can frame a Rule under the Primary Education Act, 1923, to that effect.

2. Section 27(1) (a) of the Act provides inter alia that the Provincial Government may by notification in the Official Gazette, make rules regulating the exercise and performance of the duties of local authorities. In exercise of this power Government has already framed a rule providing that the local authority shall employ administrative and supervising, inspecting and teaching staff, including such attendance officers as may be necessary. The powers conferred by section 27(1)(a) are wide and it would be competent to enact a rule thereunder giving effect to the proposals of the the Director of Public Instruction.

Sd/- P.M.M.
13-6

Remembrancer of Legal Affairs.

H.R.D.-
28-5-36
6.4

D.P.I. to R.D. No. 5393, dated the 17th June 1941

Office of the R.L.A.

Under rule 6 of the Bombay Primary Education Rules,1924, a local authority in under a duty to make adequate arrangements for the supply ~~of~~ of a sufficient number of trained teachers by the the award of stipends tenable at a Government training institution or otherwise. The adequacy of the arrangments made by a local authority in this behalf is to be determined primarily with reference to its statutory obligations under rule 58. The Rules 58 provides inter alia that of the teachers employed by a local authority at least 50% or such other proportion as may be fixed from time to time by Government shall be trained teachers. The rule itself is silent as to the mode in which Government may prescribe such minimum percentage in modification of that named in the rule; prima facie, Government can do so by executive order, whether the percentage so prescribed is more or less than 50, but it can in either case be more suitably done, ~~or~~ as indeed entails, by amending rule 58.(In any event, Government Resolution,Educational Department, No. 6472,dated the 22nd June 1939,which provides for tranining of teachers under certain circumstances, cannot be deemed to have the effect of modifying the percentage, namely 50named in that rule nor of modifying the ~~maximum~~ percentage, namely 30 prescribed therein for teachers holding the II of III year training College certificate.). The rule further provides that if the number of trained teachers falls below the ~~minimum~~ prescribed by Government the local authority shall arrange by providing stipends or otherwise, for the tranining of a sufficient number of teachers so that the prescribed proportion may be maintained, due allowance being made for expansion and wastage. If the local authority commits default in the discharge of this statotory obligation.
Action can be taken under section 264 of the Primary Education Act, 1923, on the lines indicated by Deputy Secretary Educational Department.

Sd/-P.N.M.
16-6-

Remembrancer of Legal Affairs.

M.R.D.
28-5-56
C.A

U.R. to E.D. No. 5407 ,dated the 17th June 1941.

Office of the R.L.A.

The view taken in paragraph 4 of C.D. office note dated 26th June 1941 at pages 62-64 appears to be correct. Section 3(8) of the Bombay Primary Education Act, 1923, provides that the members of the new school Board to be appointed during the period of supersession of a local authority, shall, instead of being elected, be appointed bythe Provincial Government. The section contemplates the appointment by Government of all the members of the School Board and not merely of those who in normal course would have been elected by the local authority had it not been superseded. The Municipalities which are not local authorities are not therefore entitled to elect their representatives on the school Board during the period of supersession of the local authority. ~~Hence~~ Should Government however desire not to penalise the Municipalites which are not local authorities, it can meet them half way by ~~appointment~~ appointing two members recommended by them.

Sd/-P.N.M.
Remembrancer of Legal Affairs.

Sd/-
4-7-41

H.R.D.
28-5-56
C.4

W.P. to C.D. (in Poona), No. 93-P, dated the 5th July 1941.

Office of the R.L.A.

The callwoman and the Taluka peon who retired from service were employees of the local authority, Belgaum, under rule 4(1) of the Primary Education Rules, 1924, their pay and terms of employment being determined by the regulations made by the local authority under section 27(3)(d) of the Bombay Primary Education Act, 1923. Under rule 47(3) it is the duty of the local authority to make provision for pension or institute a provident fund for menials according to the rules approved by Government. At the time when the callwoman and the Taluka peon retired from the service of the school board, Belgaum, there were no regulations framed by the local authority under section 27(3)(d) regarding pension or gratuity for the inferior servants of its school board. Consequently these inferior servants will not be entitled to any pension from the Primary Education Fund.

2. The callwoman and the Taluka peon though servants of the 'local authority' under the Bombay Primary Education Act, 1923, were not servants of the District Local Board under the Bombay Local Boards Act, 1923. Consequently any regulations framed by the local board under section 123(f) of the Bombay Local Boards Act will not be applicable to them. As pointed out in R.L.A.'s opinion No. 4410, dated the 9th August 1934, the Bombay Primary Education Act is an enactment sui generis in character and the powers exercised and duties performed by a local board qua a local authority under that Act are exercised and performed under that Act and not under the Bombay Local Local Boards Act. Consequently the callwoman and the Taluka peon cannot be granted pension from the local fund of the district local board, Belgaum by virtue only of the Board's regulations framed under section 123(f) aforesaid, much less when such regulations are made after the retirement of the servants concerned.

Sd/-P.M.M.
5-7

Remembrancer of Legal Affairs.

M.R.D.
29-5-56
C.4

U.R. to E.D., No. 5964, dated the 10th July 1941.

Office of the R.L.A.

The Director of Public Instruction's view that the buildings transferred by a Municipality to a District Local Board under section 6(1) of the Bombay Primary Education Act, 1923, would vest in the Board is correct. (See R.L.A.'s opinion No. 2023, dated 31st August 1926).

Sd/- P.M.M. 2/7

Remembrancer of Legal Affairs.

M.R.D.
29-5-36
C.A

U.R. to E.D., No. 6014, dated the 11th July 1941.

Office of the R.Ls.&.

Government has no power to make a rule under section 27(1) of the Bombay Primary Education Act, 1923 for regulating the infliction of corporal punishment in primary schools. A regulation can however be made by the local authority for the purpose with the sanction of Government under section 27(3)(d) of the Act. The view taken by Educational Department in its office note at page 121 ante is correct.

Sd/-P.N.M.
11-7

Remembrancer Legal Affairs.

H.R.D.
29-5-36
C.A

U.D. to E.D., No. 6037, dated the 14th July 1941.

Submitted.

The question for the B.L.A.'s consideration is whether the proposed rule 3 of the Model Provident Fund Rules for School Boards is in order.

2. Rule 4(1) of the Bombay Primary Education Rules, 1924, made under section 27(1) of the Bombay Primary Education Act, 1923, provides that a local authority shall employ an adequate administrative, supervising, inspecting and teaching staff including attendance officers, the pay and terms of employment generally of all members of these staffs being determined by these rules and by the regulations made by the local authority under section 27(3)(d) of the Act. Rule 47(3) provides that the Local Authority shall make provision for pension or institute a provident fund for all other officers (other than those referred to in sub-rule (1) and (2), clerks, teachers and menials according to the rules approved by Government in this behalf. Rule 47(2) provides inter alia that such of the guaranteed teachers as have under rule 5(3)or (4) exercised their option of joining the Provident Fund established by the Local Authority in lieu of pension shall, from the date of admission to the Provident Fund, be entitled to such pension or gratuity from Government or from Government and the Local Authority payable on retirement from service of the local authority as they would have been entitled to if they had been invilided on the date from which they were admitted to the Provident Fund and such further sum from the Local Authority as may stand to their credit in the Provident Fund Account, subject to the rules regulating the Provident Fund established by the Local Authority. It is likely that many pensionable servants other than the guaranteed teachers should have exercised their option under rule 5(3) or (4) to join the Provident Fund established by the Local Authority, but except rule 3 of the model P.F. rules there does not appear to exist a provision similar to rule 47(2)(i) providing for payment of gratuity or pension on retirement from service as they would have been entitled to in the event of their being invalided from the date they joined the Provident Fund in addition to the amount standing to their credit in the Provident Fund Account. The proposed rule 3 of the Provident Fund Rules aims at making provision similar to rule 47(2)(i) of the Bombay Primary Education Rules, in respect of employees other than the the guaranteed teachers.

P..

Rule 47(3) authorises the Local Authority to make provision for pension or institute a provident fund according to rules approved by Government, Rule 47(3) is wide enough to enable the Local Authority to make the proposed rule

Sd/-
30-6

A.S. E.D. may be informed that the amended rule is in order.

Sd/-
1-7

A.L.R.

I have the following difficulties:-

Office of the R.L.A.

The amended rule is in order.

Sd/-P.N.M.
1707

Remembrancer of Legal Affairs.

U.R. to E.D. No. 6322 dated, 19-7-41.

M.R.D.
29-5-56
C.4

Office of the R.L.A.

The first question for consideration of the R.L.A. is whether Government's liability to pay to the Surat Municipality half the expenditure on compulsory education under rule 6 framed under section 18(2)(c) of the repealed Bombay Primary Education Act, 1918, is continued by virtue of section 13(2) of the Bombay Primary Education Act, 1923, or whether Government's liability is limited in this case by virtue of section 13(1) of the Act to the additional expenditure, incurred by the Municipality on its compulsory education scheme after the Act came into force.

2. A similar question arose in connection with the claim of the Satara Municipality for a half share in the expenditure on compulsory primary education under section 13(2) of the Bombay Primary Education Act, 1923, read with rule 6 framed under section 18(2)(c) of the repealed Bombay Primary Education Act,1918. After considering fully all the legal effects of repeal of the Act of 1918 and also of the repeal of rule 6 framed thereunder the R.L.A. in his opinion No.296, dated the 16th January 1934, opined that section 13(2) of the Bombay Primary Education Act, 1923, retained the liability of Government created under rule 6. The Advocate General however differed from the R.L.A. and stated that section 13(2) could not be invoked to save rule 6 which was inconsistent with section 13(1), that section 13(2)saves only a statutory or contractual claim existing independently of section 13 and consequently no legal liability was created under section 13(2). In the end however he stated that the matter was not free from doubt and advised that the matter should be settled with the Municipality((see Advocate General's opinion No.6 dated 19th February 1934). It appears that the matter was not settled amicably but was taken to Court. In Reg. Civil Suit No. 156 of 1934 which was filed by the Satara Municipality against Government the First Class Sub-Judge held that the liability of Government to pay half the expenditure on compulsory primary education under rule 6 was continued under section 13(2) of the Act, 1923, and this decision was confirmed in appeal by the District Judge. Government preferred an appeal to the High Court on the grounds stated by the Advocate General in his opinion of 1934. Divatia J. who heard the appeal, dismissed it,

dismissed it, holding that for the very purpose that rule 6 ceased to have any effect after the Bombay Primary Education Act, 1923, was passed sub-section(2) of section 13 was enacted, so that Government was bound to contribute the same amount which it did when the Act of 1918 was in force and consequently under section 13(2) as well as under rule 109 framed under the Act Government was bound to contribute half the amount of actual expenditure for compulsory primary education under the Act without making any cut. Against this decision Government applied for leave to appeal under Letters Patent, but the application was rejected.

3. The aforesaid High Court decision would it seems be equally applicable to the claim of the Surat Municipality and Government would be bound to pay half the amount of expenditure on compulsory Primary Education incurred by the Surat Municipality. It is no doubt true in his opinion No. 23-confl, dated the 11th February 1938, followed in his subsequet opinions Nos. 4976, dated 22nd June 1938, 262-P dated 20th September 1938, 8853, dated 8th September 1939 and 3747, dated 17th April 1940, the R.L.A. held that in all cases not covered by section 13(1) of the Bombay Primary Education Act, the grants made by Government were merely voluntary. That opinion of the R.L.A. was based on the observations of Beaumont C.J. in Appeal No 138 of 1933that Government grants-in-aid for education are voluntary and discretionary. Apparently therefore that opinion relates to the Government grants-in-aid which are voluntary and not to statutory grants continued undere section 13(2).

4. The next question for consideration is whether Governm... ..an legally reduce the grant in respect of voluntary primary education though no schools on a voluntary basis are being run by the Surat Municipality since the introduction of free and compulsory primary education and though Government has agreed to share half the cost of providing free and compulsory primary education.

5. This question is based on the view expressed by the Director of Public Instruction at the end of para. 3 of his letter at page 1 ante that for purposes of calculating grants due to the Surat Municipality for compulsory education under section 13(1) of the Act of 1923 as amended in 1933

in 1936 the cost of primary education on account of the number of children in schools before the introduction of compulsion in 1920 is deemed to be the cost of primary education on a voluntary basis. But as stated above the claim of the Surat Municipality would be governed by section 13(2) and not by section 13(1). Consequently the question of grants on a voluntary basis as contemplated under section 13(1) does not arise. The reply to the question is therefore in the negative.

Sd/-P.N.M.
19-7

Remembrancer of Legal Affairs.

U.R. to E.D. No. 6399 dated the 22nd July 1941.

M.R.D.
29-5-36
C.4

Office of the R.L.A.

By Government Notification(General Department) No. 1427(a), dated the 11th November 1938, issued under section 4(2) of the Bombay Municipal Boroughs Act, 1925, Government incuuded in the Municipal Borugh of Ahmedabad with effect from 1st Febuyary 1939 certain areas which were subject to the authority of the District Local Board, Ahmedabad. Prior to 1st Feburary 1939 the District Local Board, Ahmedabad, wasx running certain primary schools in thise areas. It appears that notwithstanding the inclusion of the areeas within the municipal limits of Ahmedabad, the District Local Board, Ahmedabad, continued to run these primary schools till they were taken over bythe Ahmedabad Municipality on 12th June, 1939. The Municipality was then asked to make good the expenditure incurred by the District Lofal Board in running the schools from 1st February 1939 to 12th June 1939, but it disowned all liability in the matter. The question for the consideration of the R.L.A. is whether the Ahmedabad Municipality is legally bound to pay the District Local Board, Ahmedabad, all the reasonable expenses incurred by the latter in running the primary schools from 1st February 1939 to 12th June 1939.

2. When any area subject to the authority of a district local board is included within the limits of a municipality, the local board schools in such area are not automatically transferred to the control and management of the municipality. It is true that the district local board ceases to have jurisdiction over such area but there is nothing in the Bombay Municipal Boroughs Act, 1925, the Bombay Local Boards Act, 1923, or the Bombay Primary Education Act, 1923, providing for the automatic transfer of the primary schools of the district local board to the municipality on such area being included in the limits of the Municipality. There is no provision also in any of these Acts which makes it obligatory on the municipality to take over such schools from the district local board. The only way in which the transfer of such schools to the municipality can be effected is by means of a mutual agreement between the district local board and the the municipality and until such agreement is effected, it does not appear that the municipality can be held liable for any expenditure incurred in respect of such schools. The Municipality of Ahmedabad, in this case, took over the schools on 12th June 1939. It is true that under section 63(1)(p) of the Bombay Municipal Boroughs Act, it was the duty of the Ahmedabad Municipality to make reasonable and adequate provision for establishing and maintaining primary schools within

schools within this area during the period from 1st February 1939 to 12th June 1939 and that there was no such obligation on the district local boeae- board in respect of the areas during this period. But there is no provision in the Municipal Boroughs Act, the Local Boards Act or the Primary Education Act under which the district local beard can hold the municipality liable for the voluntary and unauthorised expenditure incurred by the district local board inrunning the schools durihg this period. It is also doubtful whether a claim in this behalf can be sustained against the Municipality under section 70 of the Indian Contract Act, 1872. In my opinion, the district local board is not entitled in law to recover the expenditure incurred by it for running the schools for the period from 1st February 1939 to 12th 1939. The view taken by the D.S., E.D., that the Municipality cannot be legally compelled to bear this expenditure is correct.

Sd/-P.M.M.
29-7

Remembrancer of Legal Affairs.

Sd/-
29-7-41

M.R.D.
29-5-56
C.4

U.R. to E.D. No. 6709, dated the 30th July 1941.

Office of the R.L.A.

Section 8(b) of the Bombay Primary Education Act, 1923, provides that the Primary Education Fund shall be applied subject to the provisions and for the purposes of the Act. Section 17 enacts that subjects, curricula, etc, of the approved schools and other primary schools maintained or aided by a local authority shall be as prescribed but may be altered by the school board with the sanction of the Provincial Government to suit local requirements. "Prescribed means prescribed by rules made bythe Provincial Government for the purposes of the Act. Rule 72 of the Primary Education Rules,1924, gives discretion to a local authority to introduce religious instruction in primary schools provided that (1) there is nok local objection to such instruction,(2) the attendance of pupils is optional and(3) the time devoted to it is not included in the hours of instruction prescribed in rule 73. If religious instruction is permissible under the Bombay Primary Education Act it would also be permissible to use the Primary Education Fund for purposes of such instruction. Consequently it would be competent for the Nasik local authority Municipality to meet the expenditure on religious instruction in its primary schools from it's Primary Education Fund. The view taken by E.D. in paragraph 3 of its office note at page 25 ante is not correct.

2. The recent resolution passed by the Nasik Municipality as set out on page 23 provides for instruction in the Arabic and Sanskrit languages. Such instruction, it appears, would not amount to religious instruction within the scope of rule 72. But the point would be for E.D. to decide.

Sd/-P.H.M.
29-7

Remembrancer of Legal Affairs.

Sd/-
29-7-41

U.R. to E.D., No. 6753,dated the 31st July 1941.

M.R.D.
29-5-56
U.4

Office of the R.L.A.

A plot of land adjacent to the Boys' Primary School measuring 322 sq. yds. was acquired by the Sanand Municipality at a cost of Rs. 517-8-0 for the extension of the Boys' Primary School at Sanand. In pursuance of the G.D. notification No.S-102/1, dated the 27th September 1933 (as amended in 1934) the Sanand Municipality, being non-local authority Municipality, handed over the charge of its primary schools to the District Local Board, Ahmedabad, as required by section 6(1) of the Bombay Primary Education Act, 1923, but it did not give charge of the plot of land acquired as aforesaid. It appears that no use has been made of the land, and that the land was sold to Chunilal Vadamshi by the Sanand Municipality in the year 1938 with the sanction of the Commissioner, Northern Division. G.D. office holds that the sale of the land in 1938 which had vested in the District Local Board in 1934 seems to be void ab initio. The R.L.A. is requested to state if the G.D. office view is correct.

2. Section 6(1) of the Bombay Primary Education Act, 1923 as it stood in 1934 provided that "with effect from the date notified by the Government in that behalf every Municipality shall transfer to the District Local Board all primary schools with their lands, buildings, records and equipment equipment." Unless the lands etc. are so transferred, they would not vest in the District Local Board. Consequently, the view taken by the G.D. office that the plot referred to above vested in the District Local Board in 1934, and its sale by the Municipality in 1938 is void ab initio, does not appear to be correct.

Sd/-P.N.M.
8-8-

Remembrancer of Legal Affairs.

U.R. to G.D. No. 7057 dated the 11th August 1941.

M.R.D. -
29-5-56
C.4

Office of the R.L.A.

As stated in R.L.A.'s recent opinion No. 3417, dated the 17th/18th April 1941 the expression "personal pay" has not been defined either in the Bombay Primary Education Act, 1923, or in the rules made thereunder. It means additional pay granted on personal considerations and its grant will ordinarily be purely discretionary (see Bombay Civil Services Rule 9(44). The "personal pay" is therefore not an allowance fixed under rule 59 of the Bombay Primary Education Rules. Rule 59(2) inter alia provides that for a trained teacher the limits of pay shall except as otherwise sanctioned by Government, be as prescribed. It is, however, held that "personal Pay" is not part of the scale pay and consequently it will not attract the provisionsof rule 59(2) in regulating the grant of personal pay as such by the local authority(see R.L.A.'s No. 3417dated 17/18th April 1941). It, therefore, appears competent for the local authority to grant personal pay in accordance with a regulation framed in this behalf. The Thana Local authority has not framed any regulation with the sanction of Government under section 27(3)(d) providing for grant of "personal pay" to teachers. Consequently the grant of "personal Pay" as by the Thana local authority to teachers not covered by G.R.E.D.No.S.72, dated the 18th October 1939, is clearly illegal. The Director of Public Instruction may be instructed to issue an order under section 160 of the Act suspending that part of the resolution of the Thana school board which falls beyond the scope of the G.R., E.D., No. S.72, dated the 18th October 1939.

Sd/- P.H.H.
6-6-

Remembrancer of Legal Affairs.

U.R. to E.D. No. 7070 dated the 11th August 1941.

M.R.D.-
29-5-56
C.4

5468/20-6-41.

Submitted.

The R.L.A. has been asked to advise whether the Vice Chairman of a school Board, when performing the duties of the Chairman, during the latter's absence on leave, should be considered as officiating chairman and be given travelling allowance and allowed to sign cheques and other official papers as Chairman.

2. The legal aspect of the question has been fully and correctly set out in para. 2 of E.D. office note dated 18-6-41. When Chairman of a school board is absent on leave, the vice chariman can perform the duties of the chairman such as signing of cheques and other papers under rule 24(e) of the Primary Education Rules. He would however be performing these duties in his capacity as vice-chairman and not as officiating chairman and he would not therefore be entitled to travelling allowances admissible to the Chairman; while performing the duties of the latter. If approved E.D. may be informed that that the view taken in para. 2 of the E.D. office note dated 18-6-41 is correct.

Sd/-
4-7-41

N.R.D.
29-5-56
C.4

Office of the R.L.A.

The view taken in paragraph 2 of the E.D. office note dated 18th June 1941 is correct.

Sd/-P.N.H.
15-7

Remembrancer of Legal Affairs.

Sd/-
15-7-41

N.R.D.
29-5-36
C.4

U.R. to E.D., No. 6226, dated the 17th July 1941.

Office of the R.L.A.

It appears from Government Resolution (Educational Department)No. 4060, dated 15th August 1927. that in the case of primary school teachers who have attended training institutions since 1923 the period spent under training was directed to be treated as on leave without pay, not counting for increments or leave or pension. It is true that by an order(Educational Department) No. 6472/P,dated 27th March 1941(pages 33-34 ante) Government directed that permanent teachers in the service of the local authorities in Gujarat undergoing training then would be given duty pay direct with retrospective effect and the ngfire of the the local authorities on account of the grant of duty pay to their teachers should be recovered from the discretionary grants for primary education payable to them; but the reimbursement by Government of a part of such expenditure out of the discretionary grants payable to the local authorities cannot render the period spent under training by such teachers as one on leavave with pay, since these local authorities have not sanctioned such leave and have no legally enforceable claim to the discretionary grants. The payment of "duty pay" to these teachers would strictly speaking be a payment by Government and not a payment of any salary or pay by or on behalf of the local authorities concerned and consequently these teachers would in law be considered to be servants of local authorities on leave without pay. If so, rule 5 of the Model Provident Fund Rules applies and the local authorities cannot be compelled to accept the Provident Fund contributions from the 'duty pay" of these teacher sanctioned by Government.

Sd/- P.N.M.
11-9

Remembrancer of Legal Affairs.

M.R.D.
29-5-56
C.4

U.R. to E.D., No. 8029, dated the 13th September 1941.

Office of the R.L.A.

Mere attendance at a meeting may or may not amount to taking part in or assisting in some way the movement in furtherance whereof a particular public meeting may have been organised by the conveners of that meeting and each case will have to be decided according to its own facts and circumstances. By the existing Explanation to rule 19(1) in Schedule II to the the Bombay Primary Education Rules, 1924, it has been made clear that mere attendance at public political meetings organised by any political party should not be regarded as a breach of that rule, provided that care is taken that no part is played which may suggest the favouring of a particular party. Inasmuch as the expression underlined above viz. 'any political party' may include some parties or organisations which promote or assist or themselves constitute 'prejudical movements' within the meaning of the Explanation to the proposed rule (at page 13 of the file, flagged 'X'), it will be arguable that this Explanation to existing rule 19(1) if added to the proposed rule will enable the officers and servants of School Boards to attend all public political meetings including meetings convened by or even organised in furtherance of some prejudicial movements. If it is intended that the officers and servants of School Boards should not even attend public meetings organised by the promoters of or in furtherance of the objects of a prejudicial movement, it would be better to include this prohibition specifically in sub-rule(1) of the proposed rule by inserting the words "or even merely attend any public meeting organised by or in furtherance of "between" in any way" and "any prejudicial movement". An alternative method would be not to incorporate the existing Explanation in the Rules but to give the same in a footnote as a departmental instruction and to amplify the same by making it further clear that the scope of the Explanation in the instruction is limited to public political meetings organised by only such political parties as will not come within the expression "prejudicial movement" as defined in the Explanation to the substantive rule.

Sd/-P.M.M. 11/9
Remembrancer of Legal Affairs.

Sd/-
11-9-41

M.R.D.
29-5-36

U.M. to E.D., No.3031, dated the 13th September 1941.

Office the R.L.A.

The question raised for consideration of the R.L.A. is whether Government can compel the local authorities under the Bombay Primary Education Act, 1923, and the rules thereunder to pay interest on the Provident Fund balances of their old employees, who have since been taken over in Government service, till the date of their retirement from Government service.

2. As stated by the R.L.A. in his opinion No. 10443, dated the 27th November 1940, the administrative officers and officers of the inspecting staff of the school boards taken over by Government under section 25 of the Bombay Primary Education (Amendment) Act, 1938, would be deemed to have retired from the service of the local authorities within the meaning of rule 22 of the Model Provident Fund Rules and would therefore be entitled to receive back under the Fund Rules their accumulations in the Provident Fund. Rule 22 of the Fund Rules states that if payment is not claimed before the expiration of three months after retirement no interest shall accrue beyond that period. The local authorities would not therefore be liable to pay any interest on the accumulations of these servants in the Provident Fund beyond this specified period, e.g. till the date of their retirement from a subsequent employment viz. from Government service. Apparently section 26A of the Bombay Primary Education Act, 1923, will not apply to such cases.

3. Section 25 of the Amending Act of 1938 is a transitory provision and the words "on such terms and conditions as may be determined by Government" contemplate the determination of the terms and conditions of their employment in Government service. This section does not empower Government to determine the terms and conditions of service of these employees by their former employers, viz. the local authorities concerned, even after they are taken over in Government service. The reply to the question raised is therefore in the negative.

Sd/- P.N.M.
18-9

Remembrancer of Legal Affairs.
Sd/-
18-9-41

M.R.D.
29-5-56
C.4

U.R. to E.D. , No.8273, dated the 20th September 1941.

Office of the R.L.A.

It appears that in pursuance of the Government Resolution(Educational Department) No.P.99, dated 4th October 1938,the East Khandesh local authority passed a resolution on 16th December 1938 sanctioning the discontinuance of the headmaster'and 1st assistant teacher' allowances from 1st April 1939. On a reference being recently made by the Director of Public Instruction on 30th July 1941,Government has by a resolution No. S.72, dated 29th August 1941, approved the action taken by the local authority in abolishing permanently the payment of the headmasters' and 1st assistants' allowances from 1st April 1939. Government's suggestion contained in Government Resolution(Educational Department) No.S.7., dated 18th October 1939, was not followed by the East Khandesh local authority and no personal pay was sanctioned.

2. One Bhagwan Zagalal Bhate, Head Master(a guaranteed teacher) has given Government a notice of suit on 11th August 1941 i.e. before Government approved the action of the local authority in discontinuing headmasters' and 1st assistants' allowances from 1st April 1939. contending that (1) Government Resolution(Educational Department)No.P.99,dated 4th October 1938, is illegal,(2) the resolution of the local authority dated 16th December 1938 discontinuing the allowances from 1st April 1939 was also illegal for want of sanction of Government and (3)the local authority is bound to pay either the allowances or the personal pay as per Government Resolution,Educational Department,No.S.72,dated 18th 9 October 1939.

3. The grants other than those made by Government under section 13 of the Bombay Primary Education Act, 1923,to local authorities for primary education are voluntary grants and it is entirely within the discretion of Government to decide which expenditure on voluntary education should be treated as approved expenditure for Government grant. Consequently the mere fact that the scales of pay and allowances of guaranteed teachers cannot be altered by a local authority without the sanction of Government under the provison(b) to section 8(2) of the Act cannot bar Government's right to refuse to admit the allowances paid to such teachers by a local authority for purposes of voluntary grants. By Government Resolution,Educational Department, No.P.99,dated 4th October 1938, Government informed all the local authorities that the payment of the

83-8

payment of the headmasters'and 1st assistants' allowances would not be treated as approved expenditure for purposes of Government grant after 1st April 1939 and directed that those local authorities who had not yet discontinued such allowances should submit proposals for their stoppage as early as possible. The direction in the Government Resolution was only intended to show that Government was prepared to sanction the proposal of local authorities to discontinue the allowances and that in case any local authority did not make any such perposal it would not be entitled to claim any grant in respect of the expenditure on such allowances. There is therefore nothing illegal in the Government Resolution and the contention of Mr.Bhate in this respect is not tenable.

4. Mr. Bhate's second contention will not arise in view of the sanction given by Government to discontinue the allowances under the proviso(b)to section 8(2) after he has given the present notice. E.D.'s attention is however drawn to R.L.A.'s opinion No. 1232,dated 10th February 1941,where the effect of the High Court decision in Second Appeal No. 122 of 1938 (Surat Case) is considered.

5. There does not appear to be any substance in the third contention of Mr. Bhate. Since the allowance have been discontinued with sanction of Government under the proviso (b)to section 8(2) he is not entitled to claim them. The effect of the Government Resolution(Educational Department) No.S.72, dated 18th October 1939, was considered by the R.L.A. in his opinion No. 3417,dated 17th April 1941,and as pointed out in that opinion the Government Resolution did not impose any obligation upon the local authorities to grant personal pay and the object of the Government Resolution seems to have been to express Government's approval to the grant of personal pay if the local authority so decides and to the proportionate increase in the grant-in-aid for covering extra cost which the local authority would have to incur in that connection. Since the East Khandesh local authority did not decide to grant personal pay,Mr. Bhate cannot claim it.

6. In these circumstances the suit, if filed by Mr. Bhate, would be defensible.

Sd/-P.N.M.
23-9
Remembrancer of Legal Affairs.
Sd/-
23-9-41

U.R. to E.D., No. 8401,dated the 25th September 1941.

M.R.D.
29-5-56
U.4

A.S.

Although the scales of pay and allowances of guaranteed teacher cannot be altered without the sanction of the Provl.Government under the proviso(b) to section 8(2) of the Bombay Primary Education Act, 1923 all grants made by Government other than those falling under section 13 being purely voluntary, it is open to Government to allow or disallow any part of the expenditure for admission to voluntary grants even though such expenditure covers the pay and allowances of guaranteed teachers provided such expenditure does not fall under section 13. That being the legal position, there was nothing wrong or illegal or opposed to the spirit of the proviso(b) to section sec.8(2) in informing the local authorities By G.R. (E.D.) No.P.99 dated 4-10-1939 that the expenditure on payment of allowances to ~~to~~ teachers would not be treated as approved expenditure for purposes of grant. Further, the suggestion made in that G.R. that the local authorities who had not yet discontinued the allowances should submit proposals for discontinuing them for sanction of Government was in the nature of an advise and it was for the local authorities to follow or reject it, the only risk being of losing Government grant on such expenditure in case of rejection. There is therefore no substance in the contentions raised by Mr. K.G.Deshmukh in the notice at P. 3 ante given by him through his pleader. The Views expressed by D.S. (E.D.) in his note at p.10 ante are legally in order.

Sd/- R.T.K.
12-9

A.L.M.
Seen and returned.
A-A

Sd/-
20-9-41

R.L.A.
Sd/- P.M.M.
23-9

H.E.D.
29-5-56
C.4

Office of the R.L.A.

The first question raised for consideration of the R.L.A. is whether Government can withhold grants admissible to the Surat Municipality for primary education of children who are not within the age limits for compulsory education who are less than 6 and more than II years of age.

2. The Surat Municipality introduced compulsory primary education within its limits under the Bombay Primary Education (District Municipalities) Act,1918. "Primary Education" as defined in section2(5) of that Act meant such education as was for the time being recognised as such by the Local Government; and "child" as defined in section 2(2) meant a child whose age was not less than six and not more than eleven years. Section 3 read with these provisions would make it clear that the "compulsory Primary Education" introduced by the Surat Municipality originally related to the compulsory primary education of children who were not less than six and not more than eleven years and the education of children not within these age limits was ther fore purely voluntary. There being no statutory liability on Government to bear half of the expenditure on voluntary primary education , it was quite competent for Government to refuse to make any grant for primary education of children not within these age limits. However, the Bombay Primary Education Act, 1923,as amended by Bombay Act XXI of 1938,appears to have somewhat altered the position. The proviso to section 23 of the Bombay Primary Education Act, 1923, provides that in any municipal district where a notification under section 3 of the Bombay Primary Education(District Municipalities) Act, 1918, has issued the provisions of this Act shall from the date of repeal have effect as though the municipality had followed the procedure described in this Act. Section II of the Bombay Primary Education Act, 1923, prescribes the particulars to be contained in the compulsory education scheme. Clause(e) of that section relates to the manner in which provision will be made for compulsory elementary or primary education in their vernaculars of the children of all communities in the area of compulation. "Child" as defined in section 2(6) of the amended Bombay Primary Education Act, 1923, means a child whose age at the beginning of the school year is not less than six and whose age is, with reference to elementary education not more than eleven and with reference to "Primary

"Primary Education" not more than fourteen years. The Surat Municipality has by a notification under section 3 of Act of 1918 introduced compulsory primary education. Consequently the effect of the proviso to section 28 of the Act of 1923 is that the Surat Municipality would be deemed to have introduced compulsory primary education for children who are not less than six and not more than 11 years and Government would be liable to bear under under section 13(2) one half of the expenditure on the education of such children. Government can therefore withhold grants payable on education of children not with these limits(i.e. those who are more than 11 years and not more than 6 years as stated by Assistant Secretary,Educational Department, in para. 3 at page 45 in his note at p.44ante), such grants being purely voluntary.

3. The next question for the consideration of the R.L.A. is whether Government can stop grants which are paid as special grants tothe Surat Municipality on account of approved primary schools. All grants made by Government to Surat Municipality in excess of its liability under section 13(2) of the Bombay Primary Education Act, 1923, are voluntary grants and it would be competent for Government to reduce or entirely withhold such grants at any time. Consequently it would be lawful for Government to stop special grants which are hitherto paid by Government under rule 109(b) of the Primary Education Rules on account of approved schools. The view taken by the Assistant Secretary, Educational Department in his note at page 44 ante on this question is correct.

Sd/- P.N.H.
25-9
Remembrancer of Legal Affairs.
Sd/-
25-9

M.R.D.-
29-9-56
C.4

U.R. to E.D. No. 8499 dated 27th September 1941.

Submitted.

Rule 59(2) of the Bombay Primary Education Rules, 1924, inter alias provides that for a trained teacher the limits of pay shall, except as otherwise sanctioned by Government, be as prescribed. It further provides that a Head Master and a First Assistant shall get such "allowances" as were in force on the date of the Act coming into operation, or as may be fixed by the local authority with the previous sanction of Govt. In the case of the Local Authority, Thana, the R.L.A. advised that as the "personal pay" is not an "allowance" fixed under rule 59(2), nor a part of the scale pay so as to attract the provisions of rule 59(2) in regulating the grant of "personal pay" as such by the Local Authority, the only course open to the Local Authority was to grant "personal pay" in accordance with a regulation framed in this behalf under section 27 (3)(d) of the Bombay Primary Education Act, 1923. It was consequently held that as the Thana Local Authority had not framed any regulation with the sanction of Govt. under section 27(3)(d) of the Bombay Primary Education Act, 1923, providing for the grant of "personal pay" to teachers, and as the grant of "personal pay" by the Thana Local Authority is not covered by G.R.E.D. No.S.-72dated 18-10-1939, it is illegal (vide R.L.A.'s opinion No. 7070dated 11-8-1941).

2. In view of the aforesaid opinion of the R.L.A. the E.D. office assumes that the grant of personal pay in the absence of a regulation framed by the local authority and sanctioned by Govt. to teachers covered by G.R.E.D. No.S. -72dated 18-10-1939 also would not be proper and that its payment will have to be validated by the Local Authorities framing a regulation in that behalf with the sanction of Govt. The question for the R.L.A.'s consideration is whether the view of the E.D. office is correct. The view expressed in para 2 of the E.D. office note dated 25-8-41 (PP. 15-16 ante is correct.

Vide para.2 at p.15ante

Spip M below

A/

6d/-
2-9
A.S. Reply may be as at A.
R.T.K. 6d/-
8-9 8-9

A.L.R. 8d/-
17-9-41
R.L.A. 8d/-P.N.M.
22-9

M.R.D. 29-5-56 C.4

U.R. to E.D. No. Dated. 22-9-41.

Office of the R.L.A.

In the absence of any definition of the word "children" in rule 16 of the Modal Provident Fund Rules for School Boards it will have to be given its ordinary meaning. "Children" mean the immediate descendants of a person whether by a first or subsequent marriage (see Black's Law Dictionary). An exception has been made by note C to rule 16 in the case of an adopted child; but no such exception has been made in the case of a step-child i.e. one's wife's or husband's child by previous marriage. Consequently the step-child of a widow, who is a subscriber to the Provident Fund cannot be considered to be a child within the meaning of rule 16 of the Modal Provident Fund Rules for School Boards.

Sd/-P.N.M.
2/10

Superintendent of Legal Affairs.

Sd/-
1-10-41

N.R.D.
29-5-56
C.4

U.R. to E.D. (Thro: P.& S.D.), No. 8683, dated the 4th October 1941.

6305/41

Submitted.

It appears that the District Local Board, Nasik, has been superseded and Mr. Kazi has been appointed as Administrator under section 131 of the Bombay Local Boards Act, 1923, to exercise all powers and perform duties of the D.L.B. during the period of its supersession. As the term of office of the District School Board of the D.L.B., Nasik, expired during the period of supersession of the said Local Authority, Government, in pursuance of the the provisions of section 3(6) of the Bombay Primary Education Act, 1923,

Slip N. Constituted a new School Board of sixteen appointed members (vide G.R., ...E.D. No.3. 74(19), dated 14-7-1941). One Mr.B.B. Lam has been wrongly entitled as Khan Bahadur B.B. Lam in the said G.R. and the notification (vide Serial No.9) At the meeting for election of the Chairman two of the members objected to the exercise of vote by Mr.Lam, but it was overruled by the Administrator, D.L.B., and Mr. Lam was allowed to exercise his vote subject to the condition that the proceedings of the meetings should bre reported to Government for confirmation. The Collector considers that it is a clerical error and corrigendum may be issued stating the correct name and title as "Mr.B.B.Lam, M.B.E." The D.P.I agrees with the Collector.

PP.3-5 ante

P.7 do.

2. The R.L.A. is requested to advise whether Government has any power to confirm the proceedings of a School Board meeting.

H.R.D.-
30-5-56
C.4

Office of the R.I.A.

The view expressed in paragraph 2 of E.D. office note at page 11 ante is correct.

Sd/-P.N.M. 1/10

Remembrancer of Legal Affairs.

Sd/- 1-10-41

U.R. to E.D., No. 8655, dated the 3rd October 1941.

M.R.D. -
30-9-56
C.4

Office of the R.L.A.

If Rao Bahadur Vandekar has already taken his seat as member of the School Board, Nasik, he has clearly incurred disqualification under section 3A(f) of the Bombay Primary Education Act, 1923. But it appears from the letter at page 3 ante that Rao Bahadur Vandekar has applied for sanction of Government under cause(a) of the Explanation to section 3A. Consequently, if Rao Bahadur Vandekar has not yet taken his seat as member of the School Board, it is for Government to consider whether he should be disqualified or given sanction under the Explanation (a) to section 3A to have an interest in the lease during his period of office.

Sd/- P.N.M.
10-10

Remembrancer of Legal Affairs.

Sd/-
10-10-41

U.O. to E.D., No. 8333, dated 11th October 1941

E.R.D. -
30-5-56
C.4

Office of the R.L.A.

In the case of the District School Board, Bijapur vs. Bhagwan(34 B.L.R. 1500 at page 1503) the High Court has held that a District School Board constituted under section 3(1) of the Bombay Primary Education Act, 1923, is a corporation which has a separate and independent existence apart from the District Local Board. Under Section 27(3)(d) of the Act read with rules 4, 44(1) and 53 of the Primary Education Rules, 1924, a separate staff for the School Board has to be maintained. The members of such staff are under the control of the School Board and are governed by the Primary Education Rules and the regulations made under section 27(3). The staff maintained by a Borough Municipality is governed by rules framed under section 58(c) of the Bombay Municipal Boroughs Act, 1925, and is under the control of the Municipality. The expenditure on the staff maintained by the School Board is debitable to the Primary Education Fund underx section 63 of the Bombay Primary Education Act while that on the staff of a Municipality is debitable to the municipal fund under section 66 of the Bombay Municipal Boroughs Act. It is therefore clear that the staff required to be maintained by a School Board under the Bombay Primary Education Act is entirely different from and independent of the staff to be maintained by a Municipality under the Municipal Boroughs Act.

2. It appears that the Ahmedabad Municipality, which is a local authority has maintained a staff common both to the Municipality and the School Board but has divided the the posts between both bodies i.e. is showing a number of clerks as School Board clerks and the rest as clerks of the Municipality. This system is not only improper but definitely opposed to the statutory provisions. The School Board, Ahmedabad, has to control the staff i.e. the incumbents of posts and not the posts themselves. It will not be possible to apply the rules and regulations governing service if the incumbents of the posts are to be on the joint cadre of the School Board and the Municipality. No dual or unilateral control of the whole staff would be legally feasible. Consequently the system followed by the Ahmedabad Municipality is in clear breach of the statutory provisions contained in the Bombay Primary Education Act and the rules thereunder.

Sd/-P.M.M.
1-11
Remembrancer of Legal Affairs.

U.R. to E.D. No.9504 dated, the 4th November 1941 P.T.O

Remembrancer of Legal Affairs.

Sd/-

31-10

U.R. to E.D. No, 9504 dated the 4th November 1941.

M.R.D.
30-5-56
C.4

Office of the R.L.A.

Statement of the case for the opinion of the Advocate General.

As the term of the existing School Board of the District Local Board, Surat, has expired, fresh elections are to be held. The President, District Local Board, Surat, requested the Bulsar and Rander Municipalities - the two non-local authority Municipalites in the district -to sent in their nomination papers by 26th August 1941, for one seat reserved on the School Board for their representatives. The Director of Public Instruction states that no nomination papers have been received from either of the Municipalities. From para 2 of the Director of Public Instruction's letter it appears that the Bulsar Municipality has in its resolution No, 2, dated 27th Augst 1941 resolved not to send any nomination papers for the seat reserved on the District School Board, of the District Local Board, Surat. It appears that even the Rander Municipality has passed a ~~simi~~ similar resolution. The Directorx of Public Instruction has asked the President, District Local Board, Surat, to fix a fresh date for delivering the nomination papers by the said non-local authority Municipalities.

PP. 1-3- ante

2. The questions for the Remembrancer of Legal Affairs' consideration are :

(1) Whether repeated failure on the part of the Bulsar and Rander Municipalites to submit nomination papers would amount to a persistent default as would enable Government to take action under section 179(1) of the Bombay District Municipal Act, 1901; and

(2) Whether action can be taken under section 178(1)and(2)of the Bombay District Municipal Act, 1901.

3. The proviso to section 3(2) of the Bombay Primary Education Act, 1923, provides that if any primary schools have been transferred by municipalites which are not local authorities to the local authority concerned, not more than two of such members shall be elected by the said municipalities in the manner prescribed. This provision confers a privilege on the municipalites which are not local authorities to send their representative or representatives(if power is given to elect two) to the school board and this cannot be looked upon strictly as any duty imposed on them. Failure to nominate or elect the prescribed number of members of the school board ~~in pursuance of the~~

in pursuance of the proviso to section 3(2) of the Bombay Primary Education Act, 1923 by the municipalities concerned would therefore amount only to their non-exercise of their statutory right (of franchise) and would not involve any incompetency or persistent default in the performance of any duty imposed upon them by law within the meaning of section 179 (1) of the Bombay District Municipal Act, 1901. As pointed out in the Educational Department note(at p. 12 ante) under the rules it is not obligatory on every non-local authority Municipality to nominate a candidate. Since the action on the part of the Dulsar and the Nander Municipalities in this case only amounts to a failure to exercise their right of franchise- which in its nature is clearly distinguishable from an obligatory duty - no question of their having 'made default in performing any duty imposed upon them by or under this Act or by or under any enactment for the time being in force' survives and neither section 179 nor section 179 of the Bombay District Municipal Act, 1901 will therefore be applicable. The present difficulty is due to the absence of any provision in the Bombay Primary Education Act to provide for cases of this type viz. for nominations in cases where for some reason or other an election cannot be held or does not result in the return of the requisite number of members and the proper course would appear to be to supply this lacuna(cf. section 6(3) of the Bombay Village Panchayats Act, 1933).

4. The Advocate General is requested to give his opinion on the questions raised above.

Sd/-P.M.M.
Remembrancer of Legal Affairs.

M.R.D.-
30-5-36
C.4

U.R. to the Advocate General, No. 8451 dated the 26th September 1941.

I agree with the view of the M.L.A.

2. Section 278(1) of the Bombay District Municipal Act, 1901, applies only in a case where there has been a default by a Municipality in performing any duty imposed on it by or under that Act or under any other enactment for the time being in force. Section 179(1) of the Act applies, inter alia, in the case of a Municipality persistently making a default in the performance of the duties imposed on it by or under the Act or otherwise by law. It is thus clear that before any action under section 178(2) on 179(1) can be taken, there must be a default by the Municipality in performance of a duty imposed upon it either by the District Municipal Act or by some other Law.

3. Section 3 of the Bombay Primary Education Act, 1923, deals with the constitution of School Boards. Sub section(1) provides that there there shall be a school board for every local authority. Subsection (2) provides that the board shall be constituted as prescribed and shall consist of members not less than 12 and not more than 16 elected by the local authority. The proviso to sub section (2) deals with the constitution of a school board in cases where primary schools have been transferred by Municipalites which are not local authorities to the local authority in reference to which school board is being constituted. In such cases the proviso makes it obligatory that not more than 2 of the members of which the school board consists are to be elected in the manner prescribed by the said Municipalites which have transferred the primary schools. It is thus clear that sub subsection(2) and the proviso to it are concerned with prescribing how a school boardboard of a local authority is to be constituted and that by its terms no duty is imposed on the Municipalites mentioned in the proviso to elect any members to the school board.

4. In the circumstances, there being no default in the performance of a duty or duties imposed on the Municipality, action under section ~~179~~ 178(2) of 179(1) of the District Municipal Act will not be competent.

Sd/-

Advocate General.
29-9-41

M.R.D.
30-9-50
C.4

Office of the D.J.A.

A copy of the Advocate General's opinion dated 29th September 1941, together with a copy of the Statement of the Case sent to him, is appended.

Sd/-P.N.M.
3-10

Commissioner of Legal Affairs.

Sd/-
2-10-41

M.R.D.-
30-9-56
C.4

U.O. to D.D., No. 8667, dated 4th October 1941.

Action of the R.L.A.

It is clear from the provisions of sections 3 to 5 of the Provident Fund Act, 1925, that a subscriber to the Provident Fund is competent to nominate any person to receive the amount standing to his credit at the time of his death, and that in the absence of any such nomination the accumulations would vest in his dependants as defined in section 2(c). (See MA KYWAY v. MAM LAY and another, I.L.R. 6 Rangoon, 688, followed in Ahmad v. Jamala, 37 B.L.R. 370). Consequently, any restrictions that may have been imposed by the rules prohibiting the nomination of a person other than a member of the subscriber(s family (i.e. dependants) can be relaxed as is proposed to be done in the present case. There is no legal objection to permitting the women subscribers to nominate outside the family when they live separate. It is however for the Administrative Department to consider whether this privilege is not likely, in actual practice to give rise to administrative difficulties, particularly as regards the proof of separate living and subsequent return to the family. Separate living may be necessitated either by family estrangement or by convenience; and unless it is the intention to cover both cases, the term will obviously have to be defined. Further, the proposed amendment will have to provide that if a woman subscriber subsequently decides to stay with her family, the Form of Declaration made in favour of a person outside the family shall be deemed to be cancelled; and if no fresh Form of Declaration is submitted by the subscriber showing how the amount of accumulations is to be disposed of in favour of the the members of her family, the amount shall be distributed in the manner prescribed in rule 20(b). It will be advisable for the Administrative Department to consider the practical difficulties likely to arise by reason of the amendment before submitting a revised draft to the Legal Department for scrutiny.

Sd/- P.M.M.
14-11

Chancellor of Legal Affairs,

14th November 1941.

Office of the R.L.A.

It appears from the letter of the vice-chairman at page 11 ante that leave was granted to Mr. Dhaskar under section 4A(3)and(4) of the Bombay Primary Education Act, 1923, for a period of 6 months from 27th April 1941 and no previous permission was granted to Mr. Dhaskar for his absence under section 3C(1). It is not known why leave was granted to Mr. Dhaskar from 27th April 1941 when in fact he was absent from the local limits from 15th February 1941. It is, therefore, necessary to peruse the application of Mr. Dhaskar for leave or permission and the School Board's resolution No.42 dated the 27th April 1941 granting leave for six months.

2. The Educational Department is requested to furnish this office with the said papers together with the dates of meetings of the School Board called after 15th February 1941.

Sd/- R.T.K.

Remembrancer of Legal Affairs.

Sd/-
28-10

H.R.D.
30-5-56
C.4

U.R. to E.D., No. 8312, dated the 29th October 1941.

R.L.A.'s Office.

Under section 4A(3) of the Bombay Primary Education Act, 1923, a chairman or a vice-chairman of a school board shall cease to be chairman or vice-chairman if he absents himself without the leave of of the school board for a continuous period exceeding three months, while under section 30(1) (a) a member becomes disqualified if he absents himself during three successive months from the meetings of the school board without the previous permission of the Board. The expression "absents himself" has been held to mean something more than than expression "is absent" and implies that the absence must be voluntary or deliberate on the part of the member concerned. A person who is unable to attend a meeting by reason of his imprisonment or detention under the Defence of India Rules will not therefore incur any disqualification under these provisions (see R.L.A.'s opinion No. 30-confl, dated 17th January 1941). Consequently Mr. Dharmar, Chairman of the school board, Kolaba, has not incurred any disqualification either under section 4A(3) or under section 30(1)(a) since his absence, being due to imprisonment, was involuntary. The question whether his absence from the local area was with or without the permission of the school board is therefore immaterial in the present instance.

Sd/-P.N.N.
12-12

Remembrancer of Legal Affairs.

U.R. to E.D., No. 10772 dated 19th December 1941.

M.R.D.
30-5-96
C.S.

Office of the R.L.A.

Since the scheme of compulsory primary education is in fact limited to and is being enforced in respect of only children between the ages of six and eleven, it would in this case be open to Government not to pay any discretionary grant in respect of the education of pupils who are outside these age limits and in whose case the education cannot be said to be compulsory.

Sd/- P.M.M.

Nomumbernroor of Legal Affairs. 22/12

U.O. to R.D., No. 11092, dated the 23rd December 1941.

R.R.D.
20-5-96
C.A

The question whether a qualified but untrained teacher who reverts as asstt. teacher after serving for some time as Head Master can retain after the revision of pay in 1924 the consolidated Head Master's pay of Rs. 30 sanctioned by G.R. No. 560, dated the 24th Oct. 1921 was no doubt the subject matter of litigation in civil suits Nos. 479 to 488 of 1936 and Nos. 2 and 3 of 1937 filed in the Belgaum court by certain teachers of the Belgaum School Board and the decision was that such teachers were entitled to the Head Master's pay of Rs. 30. Govt. was a party to the litigation; but all these suits were dismissed against Govt. and consequently Govt. could not take the matter to a higher court. It is not known why the Belgaum school Board preferred to acquiesce in these decisions. It is at any rate clear that these decisions are not decisions in rem and it is possible that any other court may take a different view in the same matter. The First Class Sub-judge who tried these suits did not properly comprehended the difference between "salary" and "pay" and consequently has fallen into an error. The legal position has been considered in para. 8 of the brief on the lines of which the defence of the Belgaum suits was sanctioned. It is therefore clear that the view taken by the D.P.I at P. 37 ante is correct.

Sd/-
D.P.I.

Sd/-
9-12

H.R.D.-
30-5-38
C.4

Opinion of the R.L.A.

The view taken by the Director of Public Instruction at page 57 ante that the Belgaum decision was based on some misunderstanding and should have been appealed against by the District Local Board, Belgaum is correct. As the suit was dismissed against Government, Government could not file an appeal. In any case that decision does not constitute res judicata as against Government. The course proposed by the Educational Department at page 67 ante is legally in order.

Sd/- J.R.D.
4-1

Remembrancer of Legal Affairs.

U.R. to E.D., No. 62 ,dated the 6th January 1941.

H.R.D. -
30-5-36

C.4